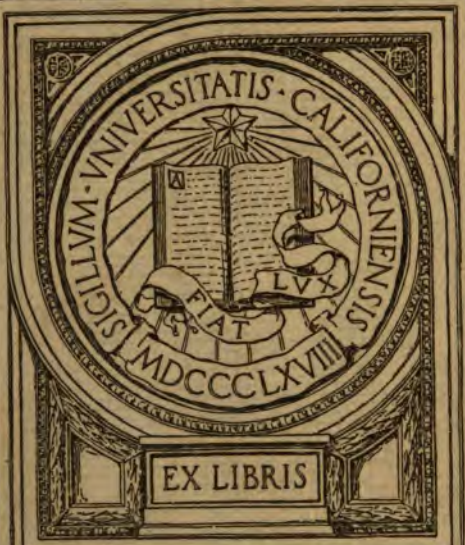

FOUR LOST LEGACIES

OF THE

EARLY NEW ENGLAND CIVIL POLITY:

I. The Old Colony Referendum.
II. The Principle of Majority Government.
III. Sound License Legislation.
IV. The Ideal of Citizenship.

DISCOURSE BY

LEONARD WOOLSEY BACON,

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Pronounced before several Historical Societies of Massachusetts and Connecticut.

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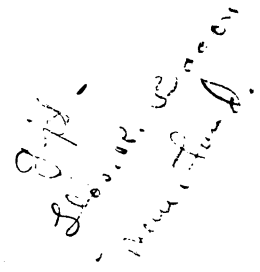


FOUR LOST LEGACIES

OF THE

EARLY NEW ENGLAND CIVIL POLITY.

BY

LEONARD WOOLSEY BACON,

ASSONET, MASS.

Read before the New London County Historical Society at its Mid-Winter Meeting, in Norwich, January 22, 1906.

LADIES AND GENTLEMEN:

I invite you to follow me in some studies in the early political history of New England which have, as I conceive, more than an antiquarian interest for us in this later generation and vastly expanded country. I am safe in assuming that the spirit of this Historical Society will not be wholly out of sympathy with my contention that the prodigious changes which these nearly three centuries have brought to pass in our political methods and political principles have not been in all cases, in the direction of progress and improvement. I make bold, in the present paper, to point out four characteristics of the polity of the Founders of New England from which we have departed, to the serious detriment of the republic.

I. The first of these is what may properly be called *The Old Colony Referendum.* There is a certain amount of mild agitation going on in our day, on the part of some doctrinaire publicists, in favor of embodying "the referendum" in our state constitutions; by which is meant the adoption of a somewhat clumsy contrivance of certain Swiss political experimenters, by which on the demand of a prescribed number of voters, any bill passed by the Congress of that republic is submitted to popular assent or veto. It happened to me to be a resident of Switzerland at the time when this constitutional provision went into effect; and from what I then observed, and from what I have since learned, I do not find it to be a particularly valuable working provision—not that it does not work well, but that it does not do very much

work of any quality. A far simpler and more effective provision, worthy, for the wisdom of it, to have survived to our day and to have been imitated in all the constitution-making States, was that requirement in the fundamental law of little Plymouth, that no bill should become a law (emergencies excepted) unless it had lain over from one legislature to the next. The lapse of this most salutary provision is not the least of the losses that civilization suffered in the merger of the little Old Colony with its overshadowing neighbor of the Bay. As compared with the cumbrous piece of mechanism of the Swiss publicists, by which some bills might, if citizens enough should take the trouble to combine, be subjected to a popular vote, it was a simple, automatic general referendum, by which *all* bills were brought under the purview of the body of citizens. No wiser safeguard has since been devised against the malfeasance of representative bodies. If it could be restored to our State constitutions in some such form as this, that unless passed by a two-thirds vote (this exception would provide for all real cases of urgency) no bill should become a law unless read a second time in one legislature and adopted by the next legislature, think what we should gain by it. To begin with, it would tend to reduce the enormous annual output of new legislation which is recognized in all our states as one of the nuisances incident to popular government. It would certainly mitigate in some measure the extemporaneous crudity of it, which often requires each new legislature to spend part of its time in repealing the work of its predecessor. It would hold the legislature in salutary fear, not only of the governor and his veto, but of the people. Distinctly bad legislation—the job bills, the grab bills, the sneak bills, the snap bills—if not impossible, would become immensely more difficult; and that public enemy, the organized lobby, would find its power suddenly curtailed. What an annual anxiety it would lift from a considerable part of the people! Great corporations and great public interests—the railroad companies, the insurance companies, the trusts, the temperance interest, the liquor interest, the Sunday interest, the anti-Sunday interest, and whatever else there is that has hopes or fears from legislation—would no longer be under the expensive necessity of maintaining their pickets at the

State-house to give warning against surprises and ward them off by public pressure or private persuasion. The occupation of the heeler and striker, if not abolished, would become a much less paying business than it is now generally understood to be. But while corruptionists would be discouraged and disgusted, honest citizens would come to their rights. This remanding to the people, so damaging to bad or doubtful projects, would be simply invigorating to such as should have merit enough to bear the sunlight and the breeze of protracted public discussion.

The restoration of the Old Colony Referendum would have even a more beneficent result in the regeneration of State politics. As things now are, our State elections deal mainly with the popularity or the paltry personal ambitions of Jones or Brown or Smith, or, worse than that, with matters of national party politics with which State officers have no more to do than with Mr. Joe Chamberlain's colonial schemes. In most States a state election is not much more than a game to bet on, like a horse-trot or a college foot-ball match. Under the Old Colony Referendum, the pending questions of State and local policy laid over from the last legislature would be distinct, definite issues before the people, inviting the study of intelligent citizens, and provoking debate in every town meeting and every voting precinct. Every State electoral campaign would be a "campaign of education." I do not mean that the measures would be voted on directly by the people;—that is the awkward Swiss way. Neither would they be the subject of formal instruction to the representative from his constituents, which was the French Jacobin way. But these measures would be the points on which candidates would be questioned, and on which elections would turn. Can any reform be suggested which would have a more healthful tendency to accomplish that great political desideratum, the breaking up of the vicious connection between town and State affairs on the one hand, and national parties on the other hand, under which citizens are every year clamorously solicited to subordinate their political home duties to some supposed necessity of supporting the national administration or of condemning it?

This, remember, was a characteristic feature of the fundamental

law of "the Old Colony" of little Plymouth. I am no blind bigot in my admiration of the Pilgrims. I am not prepared to admit that the Separatism of Plymouth was a higher and truer churchmanship than the Nationalism of Salem and Boston. But I am struck with wonder at the high wisdom of the Pilgrims in their founding of the civil state. There were many bold and original strokes of political reform delivered in those early New England days. There was the splendid *coup d'etat* of the Bay colonists in bringing their charter across the seas and so creating an autonomous state. There was the great law reform of the New Haven men, by which they dropped overboard, as they sailed, the precedents of English law—common law, statute law and canon law—and gave their republic a fresh start from the Pentateuch, resolving, as the historian Knickerbocker puts it, to be governed by the laws of God until they had time to make better for themselves. There was the glory of the Connecticut colonists, framing, with prophetic wisdom, the first written constitution of government in human history. And high over these is the excelling glory of the Pilgrims, that they did nothing of the kind, but just let their feeble republic alone to grow into shape of itself, taking such body as it should please God to give. Their grand deeds were well matched by the grandeur of their not doing. Here we find one of those contrasts that the muse of history delights in. On the one hand are these thoughtful men in the poverty of Plymouth, living all in the future, with every temptation to great schemes and visionary projects, patiently waiting year by year for the slow strokes of Divine Providence to fashion their little State into the mould of a world-wide empire; and on the other hand, fifty years later, beyond the sea, the greatest philosopher and the smartest politician in all England, John Locke and Lord Shaftesbury, sitting in the golden sunshine of a monarch's favor, are putting their sagacious heads together to produce a constitution for the Carolinas that has been the laughing stock of history from that day to this.

II. By far the most important and most original contribution of early New England to the science of polity was the principle of *Majority Government.* We have lost it now and taken instead the princi-

ple of Government by Plurality, that is, ordinarily, Government by Minorities. We have traded off our hereditary birthright, and gotten in exchange for it a mess of pottage, and an ill-smelling and unsavory mess at that. How much we have lost, what intolerable mischiefs we have invited upon ourselves, by thus abandoning the wise usage of our fathers, we have had only a limited means of proving in our own experience; for it is only within the memory of this generation that this invaluable muniment of freedom has been thrown away in Massachusetts, and still more lately in Connecticut. But we have only to look beyond the western boundary line, to where the plurality system, in the State and City of New York, has for generations had its perfect work, to see what abuses it is capable of producing. In New York City, in almost every vigorously contested election for many years, until this last year, it has been demonstrated that the majority of the citizens were opposed to the domination of Tammany Hall; nevertheless, with only occasional and brief interruptions, Tammany has held the domination from year to year and from decade to decade. Sometimes its domination has been put in serious jeopardy. In 1886 a powerful movement to overthrow it drove the Tammany wigwam to the desperate expedient of nominating an honest man (Mr. Hewitt) for Mayor. When a corrupt party nominates an honest man, it is a sign of woe indeed. Everything portended a Waterloo defeat for Tammany, for the opposition of good citizens was solid. The only hope of the thieves lay in dividing the opposition. Just then a brilliant and enthusiastic young Republican was induced—no doubt by the best of motives—to put himself at the head of a "straight" Republican ticket; and Tammany was saved! The vote against Tammany was, in round numbers, 130,000, to 90,000 in its favor. But the patriotic young Republican had succeeded in splitting the opposition vote nearly in the middle, and Tammany, condemned by a hostile majority of nearly 40,000, held control of the great city, saved, in its hour of peril, by the sagacious management of Mr. Croker, aided by the undoubtedly conscientious partizanship, I regret to say, of Mr. Theodore Roosevelt.

In 1897 came an even more momentous crisis, which was to decide the fate not only of New York, but of greater New York, and not for

a year only, but for four years. The sole question before the people was: Shall a notoriously corrupt ring, managed by a coarse, odious, and generally detested boss, be placed in almost absolute control of the immense interests of the great metropolis? The people declared, by a majority of 58,000, We will not have this gang to rule over us Whereupon the defeated party mounted gaily to the box, gripped the reins and the whip, and every brothel and gambling hell in the city was illuminated in honor of the triumph of the minority. The conscientious politician who saved Tammany this time by dividing the opposition in favor of a straight Republican ticket was General Tracy, once Secretary of the Navy. If it had not been Tracy, it would have been some one else. Mr. Croker rarely had any difficulty in finding a man, and a good man—no other kind will answer the purpose—to render him this indispensable service. At this election, there were not only two anti-Tammany candidates in the field, but three, all good men—excellent men; the more of them there were, and the better they were, the more Tammany was pleased. Intelligent citizens were at a loss which of the three to vote for, and many saw no use of voting at all in so hopeless a case. It was an easy walk-over for Tammany. Suppose the three opposition parties to be about equal to each other, and the stayers at home who saw no use in voting at all to be another equal share, Tammany had only to cast one-fifth of the votes plus one, and the remaining four-fifths minus one were of no avail. By virtue (if it is proper to speak of virtue in this connection) of a good working *minority*, the gang of thieves came legally and constitutionally into possession of the city government for the next four years.

Since then we have been witnessing twice over the agonizing periodical anxiety of good citizens of New York over the always doubtful question, can we manage to fuse together the various elements of opposition to the enemies of society? On so risky a question depends the control, for good or evil, of so many millions of people, and so many thousand millions of property!

Now suppose the charter of Greater New York had been framed in accordance with the old New England principle of majority government, with this provision, that no officer should be held to be elected

unless receiving a majority of all votes cast, supplemented by this other provision that, failing a majority for any candidate on the first ballot, the matter should go back to the people within eight days, to choose between the two highest candidates; how would these provisions operate?

1. They would begin operating long before election day. Months before, there would be searchings of heart among all bosses of all parties. The comfortable understanding heretofore subsisting between the two leading party leaders, that whichever way the election goes, they two are, between them, sure of the spoils, is thenceforth impossible; the people have a veto on them both. The caucus would still assemble, as it ought to; but it would be overshadowed by the chilling but salutary consciousness that its action was liable to be reversed at the polls by the free and unembarrassed action of the bolter and the kicker. It would have to nominate in such a way as to prevent disaffection and propitiate confidence. An objectionable candidate on any ticket might be blackballed by the men of his own party, without thereby turning over the election to the opposite party. A corrupt party would not be able to hold together its own men.

2. As election day approached, there would be no distressing anxiety among good citizens as to whether this man, or that, or the other, would be most likely to unite all the friends of good government. Union would be desirable, of course, but not indispensable. Any honest vote would be effective, and no man would have this excuse for staying at home, that there was no use in voting. All parties and factions and fads would have a fair chance. Straight Democrat or Reform Democrat, Republican or Fusionist, Socialist or Prohibitionist or Single-taxer or Knight of Labor, or whatever else, would have the opportunity to show his strength and make his moral demonstration, for what it might be worth, without being scared out of his liberty of suffrage by the party bugaboo and the cry that he was throwing away his vote and giving the election to the enemy. If among the candidates nominated under these severe conditions one was found who, by his personal qualities or the strength of numbers at his back, commanded a clear majority of the voters, he would be elected, and no other man could be.

3. But suppose the other case—that there is no clear majority, and no choice; what then? Why then there has been held, under all the sanctions that legislation can provide, free to every voter without distinction of party, a great *nominating convention* of the whole people, which has put in nomination two candidates to be voted for that day week. There will be a square fight. That little game by which a knot of adroit intriguers handling a good working minority of votes, has for decade after decade held dominion over the great metropolis in spite of the demonstrated will of the people, the little game of Tammany, which is the game of all the little Tammanies that are to be found the country over, in every town and city, is blocked forever. The individual citizen is rehabilitated, and the people have come to their rights again.

Not the least of the public benefits to be expected from the restoration of majority government is that it would permit the several States to clear their statute books of the caucus laws now so generally in use. Doubtless under the plurality system they are a necessary evil; for it is under this system, and this alone, that the power of the caucus is a public peril, to be guarded against by drastic methods; and these are certainly drastic enough. Instead of abating the power of the party machine, they aggravate it to the danger point, enabling it to intrench itself in the statute-book; giving it recognition before the law with no corresponding responsibility to the law; seeming to give the citizens, so far as they are obedient partizans, power over the machine, but really confirming the machine in its power over the citizens; completing the practical disfranchisement of the non-partizan citizen. Doubtless these laws bring some relief from the impudent frauds that have been common in the nomination business. But the good they may do is more than offset by the adopting of party organization as part of the fixed, legal machinery of government. Perhaps no constitutional amendment that has ever been adopted is of graver consequence than this device of gearing the party machine into the mechanism of the State. It is a thing to beware of.

I am fully prepared to show that the dynasty of Platt in the State

of New York, of Quay in Pennsylvania, and of the den of thieves in Philadelphia are consequences of the same system. But time fails and I must content myself with this one instance of the Tammany despotism, as showing to what abuse a free people is liable, without the safeguard of the New England principle of Majority Government.

How came this political principle to be adopted in all the New England colonies but one, when there was no precedent for it in Old England, nor, so far as I know, anywhere else in history? It is an interesting question on which much might be said, if there were time. But however it originated, here it was, and here it stayed till within the memory of some of us now living. And what it did to save the cause of freedom and human rights in New England and in America, and what it may yet do, if it can be got back into the place which it ought never to have lost, to save all the States from the shame into which Pennsylvania and New York have fallen, are subjects worth your pondering. Let me tell the story from the Massachusetts point of view.

The importance of majority election did not show at first. When there are no parties and only one ticket, one mode of election is as good as another. When there are two parties and no scattering vote, a plurality and a majority are the same thing. But let the time come when grave questions set honest and earnest men a-thinking, and votes begin to scatter, it becomes a serious question whether scattering votes are to be reckoned as of any account, or not.

Well, that time did come. Whig leaders and Democratic leaders, bidding against each other, committed their parties to the compromise of principles of right and justice, in favor of great national partizan interests. Then it began to appear whether a scattering vote was worth anything. Presently, in the election returns, alongside of the Whig column and the Democratic column, each with its thousands of votes, appeared a little trickling rill of a third column—"scattering" ten, or a dozen, or a score. And the party leaders were pleasantly amused, and said: "O, you had better give it up; you are only wasting your vote; you never can get your man in; you will have to choose between the two leading candidates." And birds of

ill omen, perched along the ridge-pole of the Liberator office, sat simply croaking in a dismal row, "It is of no use; better let politics alone and come and croak with us up here." But that was before the scattering vote had been disfranchised in Massachusetts; and the answer was made—it could not be made to-day—"Perhaps we cannot get our man in; we can keep both your men out." And they did it. One congressional election after another was hung up with "no choice," (it is said that in one district there were no less than forty ineffectual ballotings) until it was forced in upon the minds of the politicians that these obstinate and impracticable people must be reckoned with. So it came to pass that, by the power of *the scattering vote*, the free citizens of Massachusetts, in spite of Whig, in spite of Democrat, and in spite of the venomous little gang of Garrison anarchists, were able to send to the Senate Charles Sumner and Henry Wilson, and to place in the House of Representatives New England incarnate in the person of Eli Thayer, the man who abolished slavery.

How came this priceless muniment of popular liberty to be lost? The story is worth telling.

The latest of those constitutional conventions which make so noble a feature of Massachusetts history was held at a time (1854) when the growth of a third party caused the inconveniences incidental to majority election to be keenly felt by the two parties which had so long divided between them the supremacy of the State. It was natural enough that some should be eager to cut off the inconveniences at a stroke by disfranchising the scattering vote—counting it, to be sure, and reporting it, but treating it otherwise as of no practical importance. It was demanded that Massachusetts should abandon the most honorable and distinguishing feature of her immemorial polity, and adopt the principle of plurality election, and let minorities govern. The question was freely debated in as able a political assembly as ever sat; and great as were the temptations, the demand was resisted and refused. Even case-hardened politicians, like the two Benjamins, Hallett of Boston and Butler of Lowell, rose, for the moment, to the dignity of a statesmanship worthy of the august body of which they

were members, and declared that, speaking as politicians, they would welcome the change; speaking as citizens, they must reject it. In the spirit of that unknown Roman who planted a rose on the grave of Nero, I tender this humble tribute to the memory of Ben Butler.

How it happened that in that noble body no one had the gumption to propose retaining the vital principle of majority election, while clearing it of the liability to prolonged deadlocks, I do not know. But so it was. The great convention held firmly to the principle of majority government as a safeguard against party tyranny too precious to be lost. But the needed limitations were not provided. Election contests were tediously protracted, till at last the people lost patience and burned the barn to get rid of the rats. What the great convention had held fast as an invaluable muniment of freedom, some later legislature by a snap vote tossed into the scrap heap. It was a revolution.

The story in Connecticut has been different. Here the alternative to a majority election of State officers has been to turn the choice over to a rotten-borough legislature, that could be relied on to defeat the popular will more effectually than even the plurality system could do it. If no other course had been open, the lapse into plurality election and minority government would have been justified.

The hour is approaching when this elect people, whose are the fathers, and whose boast it is that they never were in bondage to any man, will awake to the consciousness that they have ceased to be governed by the free majority of their own votes, and have come to be dominated, not even by a party, but by the faction of a party, by the ring of a faction, and by the boss of a ring. What separates you from the boss tyranny that prevails in New York and Pennsylvania, is only the possible interval of a very few years. The very expedients used for warding off this result are bringing it nearer. Your laws for the recognition, sanction and regulation of the primary meeting give a firmer grip to the professional politician, and give the individual citizen to understand that he may have an effective voice in the affairs of the State only on condition of being broken to the harness and wearing the collar of some organized party.

The way out of these difficulties, present and prospective, is to back out, the way you came in. Returning to the original principles of the Commonwealth, we do not indeed get rid of parties and caucuses; we do not want to. We get rid only of the arrogant and insolent supremacy of them. Thenceforth they would understand their responsibility to the people—not only to the party, but to the kicker, the bolter and the mugwump, whom their souls abhor, but whom then it would be no longer safe to treat as a negligible quantity. At the polls the citizen would no longer be shut up to the wretched alternative, either to make choice between two evils, or to fire a blank cartridge into the air. He would be free to defeat the candidate, without helping elect the other candidate. The disciplined legions of the Pennsylvania Republicans could no longer be marched to the ballot-box in solid column to vote the machine ticket, after they found that they could defeat the ticket without turning the State over to the Democrats. Citizens of New York, whose one desire is so to vote as to rout the den of thieves that has ruled and plundered them these fifty years, would no longer be subject to distraction by the rival clamors of two or three opposition parties, each shouting that votes would be simply wasted that were cast for the other candidate. Given the majority principle and ring rule in New York is dead beyond resurrection. Without it, a ring despotism is impending for Boston and Worcester, for Hartford and New Haven.

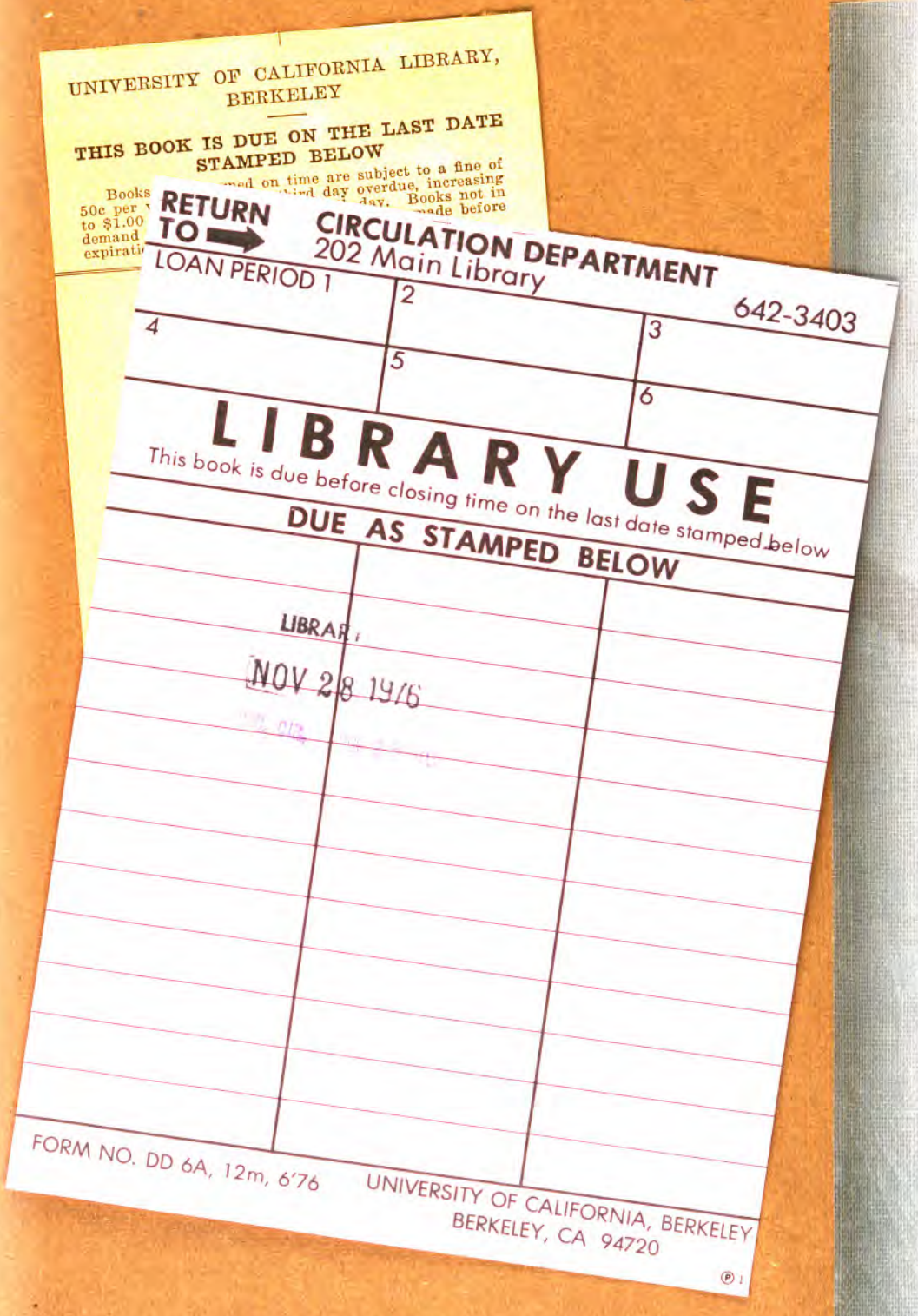
I had hoped to speak fully of two other of our Lost Legacies, illustrating the political wisdom of our fathers, and the unwisdom of some of their successors. Let me at least mention them.

III. That noble law reform in which originated the admirable old *License Laws* of the New England colonies and States. It took the immemorial English abuse of granting money-making monopolies to court favorites, and transfigured it into a wise and salutary system of License Legislation for controlling, in the interest of the public safety, certain necessary but dangerous sorts of business. It was due to this reform that these colonies, and then these States, had, for so many generations, down to the time when the temperance men and the temperance women began monkeying with the statutes, that License Law

controlling the sale of intoxicating liquors, under which no liquor-saloon or bar-room or tippling-house could legally exist within the Commonwealth—the best prohibitory law that has yet been devised. Through the more or less unconscious co-operation of the temperance reformers with the liquor-selling interest, we have lost, not only the law, but the very idea of sound license legislation. It has suited the policy of the so-called prohibitionists, to represent that license legislation is simply an expedient by which the Commonwealth seeks to collect blood-money by compounding with a business essentially criminal; and that the business of a licensing board is to sell permits for doing mischief to cash customers over the counter; and this definition, that suited the prohibitionist, equally suited the basest elements in the liquor-selling interest. So through the mutual helpfulness of these two antagonistic parties the historic conception of sound license legislation has been lost out of the popular mind, and the ideal of the fathers has been miserably perverted and corrupted. With the connivance of zealous reformers the license laws have been made low and lax; and to the delight of the liquor-dealers the alternative prohibition has been made rigorous and annoying, and the result is what we see it to be to-day. The right use of license laws is indicated on one of the earliest pages of Winthrop's Journal; the working of it is illustrated in a striking passage in the Travels of President Dwight, a hundred years ago, contrasting the orderly New England tavern, controlled by the salutary license law of that time, with the debased and demoralizing character of the taverns across the New York line, where our modern corrupt idea of license as a measure "for revenue only" was already in vogue. It was one of the foremost students of New England history, and at the same time one of the earliest and life-long champions of the Temperance Reformation, who, at the end of sixty years of public service, declared that, after witnessing the many experiments in temperance legislation from 1825 onward, he was satisfied that the best of all laws governing that subject was a good license law.

IV. Finally the most precious of our lost legacies from the Fathers is the ideal of citizenship as a solemn trust conferred by the

State upon worthily qualified persons, to be executed under oath, with sole reference to "the public weal, without respect of persons or favor of any man." The admission to the franchise, in the old time, was like the investiture of a monarch; and the Freeman's Oath, "by the great and dreadful name of the ever-living God" consecrating the freeman to his high function, was like the coronation oath of a king. The notion that to have a share in the responsibility of government is a universal and inalienable right of humanity, a *harpagma* for every one to snatch at for his own behoof, had no place in the New England polity. That high privilege, that solemn duty, was to be conferred on those who would use it worthily, and on no others. Doubtless through the successive generations there has been many a lapse from the realization of this ideal. But it has been reserved to our own time to witness the open abandonment and repudiation of it. We owe the debasement of the moral standard of public life in part, perhaps we ought to say in large part, to that woman suffrage movement which gave such lavish promises of the angelic purification of politics. Its major premise was that everybody had a natural right to vote; and its argument was that if this right should be conceded to women, they would use it to promote their own interests as a class. It was exactly in the line of this reasoning, when the nation, in a disastrous hour, conferred the suffrage at a single stroke, on many myriads of persons notoriously incapable of using it aright, and did this with the openly avowed purpose that they should use it, not "for the public weal," but as a defensive weapon, and for the advancement of their race interests; whereupon they were not slow to better the instruction. From this point it is not so very long a descent, by natural gravitation, to that lower deep of the Delaware idea—an idea which is alleged to be not a total stranger in more northern latitudes—the idea that a freeman's right of suffrage is a snug piece of personal property, having an appreciable market value in cash, that is to be disposed of to the highest bidder. Is this, or is it not, the level to which our political life is settling down? The question is worth our pondering.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